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SHIRLEY E. FAUST, CLERK
By Diane Overholzer Deputy

11 MONTANA FOURTH JUDICIAL DISTRICT COURT
12 MISSOULA COUNTY

13 TROY HAUERWAUS,

14 Plaintiff,

15 -vs-

16 ALLIED WASTE SERVICES OF
17 NORTH AMERICA, L.L.C., a
18 Montana limited liability company;
19 ABC CORPORATION 1-10, and
20 JOHN DOE, A-J,

21 Defendants.

Cause No. DV-12-63

Dept. No. 1 ED M-J-14

COMPLAINT & JURY DEMAND

22 PARTIES

23 1. At all times relevant the Plaintiff, Troy Hauerwaus ("Hauerwaus" or
24 "Plaintiff"), was a resident of the State of Montana, residing in Missoula,
25 Montana.

COMPLAINT & JURY DEMAND

1 2. The Defendant, Allied Waste Services of North America, L.L.C. ("Allied"
2 or "Defendant") is a Montana limited liability company conducting business
3 operations within the County of Missoula, State of Montana.
4

5 3. At all times relevant, Allied transacted business in the State of Montana,
6 entered into contracts and owned, used or possessed property within said State,
7 entered into contracts for services to be rendered and/or materials to be furnished
8 within said State, employed residents of said State and otherwise availed itself of
9 the rights and benefits of the State of Montana.
10

11 4. Defendants ABC Corporation 1-10 and Defendants John Doe A-J are
12 entities or persons whose identity is as yet undetermined but who may have
13 liability for Plaintiff's claims.
14

15 **FACTS COMMON TO ALL COUNTS**
16

17 5. In or around October of 2009, Allied hired Plaintiff as its lead welder.

18 6. Pursuant to the terms of his employment, Plaintiff was paid a base hourly
19 rate and received the value of fringe benefits including, but not limited to, health
20 insurance coverage and retirement contributions.
21

22 7. Allied wrongfully terminated Plaintiff's employment on or about
23 September 28, 2011. The reason provided by Allied for the termination was an
24 alleged violation of Allied's Eye and Face Protection Safety Policy. However,
25 this was not the honest reason for the termination, but rather a mere pretext for

1 the illegitimate purpose of discharging Plaintiff for violation of a written policy
2 that Allied, through a course of conduct, selectively enforced or never adhered to.

3
4 8. During his employment with Allied, Plaintiff improved the welding shop
5 through hard work and a commitment to excellence purportedly required of all
6 Allied employees. For example, Plaintiff was the only shop employee to receive
7 a safety award during his period of his employment.
8

9 9. Despite his commitment to quality, service and integrity during his
10 employment, Plaintiff was consistently subjected to a hostile and abusive work
11 environment of the kind and nature which created a working environment that
12 was both objectively and subjectively offensive. The environment was one that a
13 reasonable person can and did find hostile and abusive. The environment
14 unreasonably interfered with Plaintiff's work performance and ability to do his
15 job absent significant psychological interference.
16
17

18 10. Among other discriminatory practices, Allied is well known for engaging
19 in wide spread nepotism, especially with respect to the selective enforcement of
20 various company policies, including its Eye and Face Protection Safety Policy.
21

22 11. Allied's Eye and Face Protection Safety Policy provides:
23

24 1. Eye and/or face protection is provided and must meet
25 ANSI Z87.1 and worn whenever welding, cutting, grinding,
sanding, chipping, power washing, sorting refuse/recyclables
or other operations where fine particles are produced. Eye
protection also is issued and used during operations when

1 dust, splash or other hazards to the face and eyes are apparent
2 or may be anticipated.

3 2. Safety glasses must be worn in all designated working
4 areas of maintenance shops at all times unless in a clearly
5 designated identifiable reception or walkway.

6 12. The foregoing policy is facially ambiguous in that it does not specify
7 whether the welding hood/mask and safety glasses must be worn simultaneously
8 at all times. For approximately two (2) years, Allied ratified Plaintiff's use of
9 only one protection or the other and selectively enforced the policy depending on
10 the employee violating the same. Patronage and favoritism was bestowed upon
11 certain employees who violated the policy but were never written up or
12 discharged.
13
14

15 13. Plaintiff's termination was a direct and proximate consequence of Allied's
16 violation of and selective enforcement of its own safety policy and, accordingly,
17 was not otherwise supported by good cause as required by Montana law.
18

19 **COUNT I: WRONGFUL DISCHARGE § 39-2-901, MCA, et. seq.**

20 14. Comes now the Plaintiff and re-alleges and re-affirms all allegations
21 contained in paragraphs one (1) through thirteen (13) above as if set forth herein.
22

23 15. At all times relevant while employed by Allied, Plaintiff performed his job
24 consistent with and pursuant to training received and policies, protocols and
25 procedures in place by Allied.

1 16. On or about September 28, 2011, Plaintiff was wrongfully terminated from
2 his employment by Allied. The alleged reason for the termination was violation
3 of a policy which Allied itself either selectively enforced or failed to adhere to
4 altogether.
5

6 17. At the time of Plaintiff's discharge, he was not a probationary employee.
7

8 18. In discharging Plaintiff, Allied did not have good cause.

9 19. In discharging Plaintiff, Allied did not have a legitimate business reason
10 for such action.
11

12 20. Plaintiff's discharge was wrongful insofar as it was pre-textual in nature,
13 not predicated on good cause and because Allied's conduct was motivated by
14 ulterior motives wholly unrelated to Plaintiff's job performance.
15

16 21. The reason provided by Allied for Plaintiff's termination was false and
17 wholly lacked any basis in fact under the circumstances.

18 22. As a direct, immediate and proximate consequence of Plaintiff being
19 wrongfully discharged by Allied, Plaintiff has incurred direct and consequential
20 damages.
21

22 23. As a direct, immediate and proximate consequence of Plaintiff being
23 wrongfully discharged by Allied, Plaintiff has sustained the loss of valuable and
24 extensive fringe benefits.
25

**COUNT II: WRONGFUL INTERFERENCE
WITH UNEMPLOYMENT BENEFITS**

24. Comes now the Plaintiff and re-alleges and re-affirms all allegations contained in paragraphs one (1) through twenty-three (23) above as if set forth herein.

25. After his termination, Plaintiff filed for unemployment benefits with the Montana Department of Labor and Industry ("Department") – Unemployment Insurance Division.

26. Allied wrongfully and maliciously opposed Plaintiff's filing and interfered with his attempt to collect unemployment benefits. In doing so, Allied provided false and misleading information to the Department.

27. Allied's acts were wrongful, fraudulent and malicious.

28. As a direct, immediate and proximate consequence of Allied's wrongful acts, Plaintiff has incurred direct and consequential damages including, but not limited to, attorney's fees, costs, and delay in receiving unemployment benefits. All of these damages were a foreseeable consequence of Allied's wrongful acts.

1 WHEREFORE, Plaintiff demands judgment against Allied for:

- 2 A. Damages in amount to be proven at trial;
- 3
- 4 B. Interest at the highest rate provided for by law;
- 5
- 6 C. Costs;
- 7
- 8 D. Expenses;
- 9
- 10 E. Attorney's Fees; and,
- 11
- 12 F. For such other and further relief as this Honorable Court deems just.

13 **JURY DEMAND**

14 Plaintiff demands a jury trial on all issues so triable.

15 DATED this 16th day of January, 2012.

16 DATSOPOULOS, MacDONALD & LIND, P.C.

17

18 By: _____

19 Milt Datsopoulos

20 J.R. Casillas

21 Attorneys for Plaintiff

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